

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Zoning Commission



ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 10-14(1)

Z.C. Case No. 10-14

Big Bear Cafe

(Map Amendment for 1700 1st Street, N.W. Square 3103, Lot 800)

March 11, 2013

Order Denying Karla M. Lewis's Motion for Reconsideration

At a public meeting on March 11, 2013, the Zoning Commission for the District of Columbia ("Commission") considered Karla M. Lewis's motion for reconsideration of Z.C. Order No. 10-14 granting an application from Stuart Davenport, trading as the Big Bear Café, ("Applicant") requesting the rezoning of Lot 800 in Square 3103, from the R-4 Zone District to the C-2-A Zone District ("Application"). For the reasons discussed below, the Commission denied the motion.

Reconsideration Motion and Opposition Thereto

Z.C. Order No. 10-14 became effective upon its publication in the *D.C. Register*; on February 15, 2013. Pursuant to 11 DCMR § 3029.5, Karla M. Lewis filed a timely motion for reconsideration on February 25, 2013. (Exhibit ["Ex."] 63. The Commission treated the motion as being made on behalf of the party in opposition to the application, which was referred to in Z.C. Order No. 10-14 as "the Lewis Group."¹

In support of her motion, Ms. Lewis stated:

In the order for Case No. 10-14, the findings of fact item # 24 indicates that [Advisory Neighborhood Commission] 5C's report stated the ANC's continued support for the application. However, the ANC's support was contingent on the applicant's promise to agree on a covenant restricting the business use. The applicant refused to furnish a covenant agreement with business restrictions as promised. This is a breach of the written agreement from the ANC Commissioner Youngblood's letter.

The Applicant opposed the Motion for Reconsideration by letter dated March 4, 2013. (Ex. 64.) The Applicant argued that, contrary to Ms. Lewis's assertion, the Advisory Neighborhood Commission's support was not contingent on the Applicant agreeing to a covenant.

¹ The "party" box was checked on the motion's form and the Applicant's opposition referred to the motion as having been filed by "the: Lewis Party."

ANC Reports

Advisory Neighborhood Commission ("ANC") 5C, the ANC in which the property is located, submitted three reports in this case. The first was dated July 23, 2013, and was submitted on August 1, 2012. It stated that the ANC voted to "rescind all prior decision regarding the Big Bear Café," and that the ANC would hold a special public meeting on August 21, 2012 to consider the Application. (Ex. 22.)

ANC 5C submitted a second report by letter dated August 21, 2012. (Ex. 26.) In this report, ANC 5C indicated that at a duly noticed and regularly scheduled meeting and with a quorum of the ANC commissioners present, the ANC voted unanimously to support the proposed zoning map amendment. The report stated that the ANC's support was based in part upon a presentation made by Single Member District 5C03 Commissioner Hugh Youngblood, who stated that the Applicant was willing to address concerns raised by a "small contingent of residents who opposed the proposed map amendment." Attached to the report was a letter presented by Commissioner Youngblood that listed these concerns, including:

Consider adding covenants to the deed that bind future uses of the property by subsequent owners.

The ANC report did not state that its support was contingent on the satisfaction of the conditions in Mr. Youngblood's letter.

ANC 5C submitted a third report dated November 13, 2012. (Ex. 57.) The report stated that Ms. Lewis had appeared at the ANC's public meeting and expressed concern that the Applicant had recanted on its promise to consider a covenant.

ANC 5C's report then indicated that following a lengthy discussion the ANC approved the following motion:

While expressing concerns about the inability of the parties to resolve their dispute, in Zoning Case ZC 10-14, and the allegations of the Protestants that the applicant has failed to negotiate in good faith, ANC 5C never-the-less stands by its letter of support of August 21, 2012 with its underlying conditions.

Order No. 10-14

Z.C. Order No. 10-14 contained the following two relevant findings of fact:

11. By letter dated August 21, 2012, ANC 5C indicated that at a duly noticed and regularly scheduled meeting, on the same date, and with a quorum of the ANC commissioners present, the ANC voted unanimously to support

the proposed zoning map amendment. (Ex. 26). Such action superseded and replaced earlier ANC action set forth in the record as Exhibit 22.

24. The [Zoning] Commission held a public meeting on November 19, 2012 and considered the submissions by the Applicant and The Lewis Group. The Commission also re-opened the record to receive a supplemental report by ANC 5C (Ex. 57). The report stated ANC 5C's continued support for the Application.

CONCLUSIONS OF LAW

The Commission's rules provide that a party may file a motion for reconsideration, rehearing or re-argument of a final order in a contested case proceeding within 10 days of the order having become final. (11 DCMR § 3029.5.) As indicated, the motion was timely filed by a party.

Reconsideration motions must state "specifically the aspects of the final order claimed to be erroneous, the grounds of the motion, and the relief sought." (11 DCMR § 3029.6.)

Ms. Lewis's motion correctly indicates that Z.C. Order No. 10-14 noted the ANC's continued support of the Application. Ms. Lewis claims that this support was contingent upon the recordation of a covenant that restricted the use of property. Ms. Lewis then notes that the Applicant and the Lewis Group had not reached agreement on the terms of such a covenant by the time of the Commission's vote to grant the Application. Ms. Lewis' motion does not expressly state why this is significant. However, if the ANC's support was in fact contingent upon the Applicant's agreement to a covenant, the Z.C. Order No. 10-14 should have stated as much and noted that the condition had not been satisfied.

The Commission's Order was correct in not doing so because the ANC did not in fact condition its support upon the Applicant's agreeing to a covenant. The ANC's August 21, 2012 report stated that its support was based in part upon a presentation by the Single Member Commissioner for the area that included a representation that the Applicant was willing to address certain concerns, including a request that it "consider" recording a covenant that restricts the use of the property. The ANC's report did not provide that its support was contingent on the Applicant actually agreeing to record such a covenant.

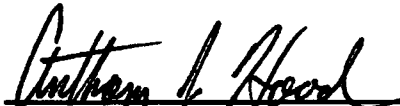
In its November 13th report, the ANC indicated that it was aware that no agreement had been reached as to a covenant, yet the ANC claimed no "breach" as asserted by Ms. Lewis, but instead stated that it stood by "by its letter of support of August 21, 2012 with its underlying conditions." As noted, these conditions only sought to have the Applicant work with those in opposition in order to address their concerns, including consideration of a covenant.

Therefore, the final order properly concluded that the ANC supported the Application.


Accordingly, the motion for reconsideration filed by Ms. Lewis is hereby **DENIED**.

VOTE: **3-0-2** (Anthony J. Hood, Michael G. Turnbull, and Peter G. May to deny;
Marcie I. Cohen and Robert E. Miller not voting, having not participated)

In accordance with 11 DCMR § 3028.8, this Order is final and effective upon its publication in the *D.C. Register* on August 30, 2013.



ANTHONY J. HOOD
CHAIRPERSON
ZONING COMMISSION



SARA A. BARDIN
DIRECTOR
OFFICE OF ZONING